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Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

MYRNA I. JOHNSON,

Plaintiff,

v.

FRED MEYER STORES, INC., a Delaware
corporation; and JAIME SAN MIGUEL,

Defendants.

Case No. 1J-04-008-CV (RRB)

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**DECLARATION OF JAMES R. DICKENS (10/19/07) RE PROPOSED ORDER
ON CERTIFICATION**

I, James R. Dickens, declare under oath as follows:

1. I am an attorney with Miller Nash LLP, one of the attorneys for the defendants in the above-referenced matter. I make this declaration based on my personal knowledge and the records and files herein.
2. This declaration is submitted in support of defendants' proposed order on certification to the Alaska Supreme Court.
3. On behalf of defendants, I sent a proposed order on certification to plaintiff's counsel on Friday, October 12, 2007. This was based upon my review of the Court's Order on the motion for reconsideration (Docket #127) and discussions with my co-

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counsel, Mr. Gruenstein, who attended the pretrial conference on October 5, 2007. Plaintiff's counsel and I have exchanged proposed revisions over the last week. But we have not been able to reach agreement on the final certification order re the state court issue.

4. On behalf of defendants, our position with regard to the issue of state law is that it should be inclusive of the matters addressed in the Court's Order re Motion for Reconsideration. The opening clause we proposed to the state court issue, which references the dismissal of the discrimination and retaliation claims, is an important part of the issue as reflected in the Court's Order of October 5, 2007. We ask that the proposed certification order set forth in the attachment be the order presented by this Court to the Alaska Supreme Court for potential certification.

5. In defendants' proposed order on certification, we sought to quote the Court's holdings in order to consistently portray those decisions with accuracy. At plaintiff's request, we have augmented some of those quotations.

6. In Section IV on Relevant Facts, we set forth the Court's findings on the Order on Summary Judgment (Docket #81) at 2-4. Plaintiff sought to add her contentions about various matters. First, her contentions are argument and they are not findings by this Court, or even mentioned in the Order on Summary Judgment. Second, we would have to canvass the entire record to find out where these contentions by plaintiff were previously made and if they were made as plaintiff characterizes. Third, if plaintiff has further factual contentions, then defendant wants various other contentions, and adding all of these will lead to a lengthy proposed certification order. It is defendant's position that these factual contentions that are not part of any order by the Court, assuming the Alaska Supreme Court accepts the proposed certification, would better be set forth in any subsequent briefing if requested.

7. For the reasons set forth above, defendants ask that if the Court elects to certify the issues, it be per the order attached. Defendants do not join in the motion for certification, but do not oppose it if the issue is as discussed in the October 5, 2007, Order on

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Motion for Reconsideration. The cornerstone of our representation that defendants would not oppose the motion to certify was that the order on certification was satisfactory to defendants and consistent with the key issues set forth in the Court's Order on the Motion for Reconsideration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNED at Seattle, Washington, on October 19, 2007.

s/ James R. Dickens

Certificate of Service

I hereby certify that on October 19, 2007,
a copy of the foregoing was served
electronically on:

Mark Choate
lawyers@choatelawfirm.com

s/ James R. Dickens